

08cv616  
JMR/FLN**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

CSAV, INC.,  
a Delaware corporation,

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

Plaintiff,

Pat. # RE 36,978

v.

MASS ENGINEERED DESIGN, INC.,  
a Canadian corporation,  
and JERRY MOSCOVITCH,  
a Canadian resident,

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT BY CSAV, INC.**

Plaintiff CSAV, Inc., hereby brings this action against Defendants Mass Engineered Design, Inc., ("Mass Engineered") and Jerry Moscovitch ("Moscovitch") (collectively, "Defendants") for a declaration that United States Patent RE 36,978 ("the '978 Patent") is invalid, unenforceable, and not infringed by CSAV, Inc.'s multi-display mount products.

**NATURE OF THE ACTION**

This is an action arising under the United States Patent Laws, 35 U.S.C. § 1 *et. seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, in which CSAV, Inc. seeks a declaration, damages, and injunctive relief arising from Defendants' contentions that CSAV, Inc.'s multi-display products infringe the '978 Patent, which is attached hereto as Exhibit A.

**SCANNED**

MAR 05 2008

U.S. DISTRICT COURT MPLS

### **THE PARTIES**

1. CSAV, Inc. is a Delaware corporation having its principal place of business at 8401 Eagle Creek Parkway, Suite 700, Savage, Minnesota, and is in the business of, *inter alia*, manufacturing and selling audio and video mounting solutions.

2. On information and belief, Mass Engineered is a corporation organized and existing under the laws of the province of Ontario, Canada and has its principal place of business at 474 Wellington Street West, Toronto, Ontario, Canada.

3. On information and belief, Jerry Moscovitch is an individual residing in the province of Ontario, Canada.

### **JURISDICTION AND VENUE**

4. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over Mass Engineered and Moscovitch because, on information and belief, Mass Engineered and its owner and founder, Moscovitch, have and/or are regularly conducting business in this judicial district, both by direct sales to residents of Minnesota and by sales by their current and former distributors and resellers through the stream of commerce. Moreover, Defendants have accused CSAV, Inc.'s multi-display mount products of patent infringement, and CSAV, Inc.'s multi-display mount products are made, used, sold, and offered for sale in this judicial district.

6. Venue is proper in this Court pursuant to at least 28 U.S.C. §§ 1391 (b)-(d) and 28 U.S.C. § 1400(b).

**FACTS GIVING RISE TO THIS ACTION**

7. According to the records available from the United States Patent and Trademark Office ("USPTO"), United States Patent No. 5,687,939, entitled "Dual Display System" issued on November 18, 2007 and identified Moscovitch as inventor.

8. Further according to the records available from the USPTO, United States Patent No. 5,687,939 was reissued as the '978 patent.

9. On information and belief, Moscovitch is the sole owner of the '978 Patent.

10. On information and belief, Moscovitch has granted Mass Engineered an exclusive license to the '978 Patent.

11. On or about July 7, 2006, Mass Engineered and Moscovitch filed a lawsuit in the United States District Court for the Eastern District of Texas (Civil Action No. 2:06-cv-272) against multiple defendants including Ergotron, Inc., Dell, Inc., CDW Corporation ("CDW"), and Tech Data Corporation alleging infringement of the '978 Patent based on the defendants' manufacture, use, sale, importation, and/or offers for sale of certain multi-display products, (the "Texas Litigation").

12. On November 27, 2007, the court in the Texas Litigation held a Markman Hearing to construe the claims of the '978 Patent.

13. In the Texas Litigation, on November 30, 2007, CDW filed a Third Party Complaint against CSAV, Inc. alleging breach of warranty and an obligation to indemnify CDW in that action. CSAV, Inc. was served with CDW's Third Party Complaint in the Texas Litigation in December of 2007.

14. Paragraphs 22 and 65 of CDW's Third Party Complaint in the Texas Litigation indicate that the following products manufactured and sold by CSAV, Inc. have been accused of infringement of the '978 Patent: Chief FTP-220 (CDW 1021070) and Chief FTP-320 (CDW 997919).

15. Defendants have also sought discovery in the Texas Litigation with respect to at least CSAV, Inc.'s products Chief PDC2397, Chief PDC2044, Chief PFB2084DB, Chief FTA1002B, Chief FTA1028B, Chief FTP320B, Chief MSP-DCCFCY220B, Chief MSP-DCCFTP220B, Chief MSP-DCCFTP320B, Chief MSP-DCCFTP440B, Chief PFB2057SB, Chief FTA1042B, Chief FTA220B, Chief FTA1014B, Chief FTA1001B, Chief FTP220, and Chief PDCU.

**COUNT ONE—DECLARATION OF NON INFRINGEMENT  
OF THE '978 PATENT**

16. CSAV, Inc. repeats and realleges the allegations of Paragraphs 1-15 as if fully set forth herein.

17. There is an actual and justiciable controversy between CSAV, Inc. and Defendants regarding the infringement of the '978 Patent.

18. CSAV, Inc. has not engaged in and is not engaging in activities that constitute infringement, whether direct, contributory, or by inducement, of any valid claim of the '978 Patent.

**COUNT TWO—DECLARATION OF INVALIDITY OF THE '978 PATENT**

19. CSAV, Inc. repeats and realleges the allegations of Paragraphs 1-18 as if fully set forth herein.

20. There is an actual and justiciable controversy between CSAV, Inc. and Defendants regarding the validity of the '978 Patent.

21. The '978 Patent is invalid for failure to comply with one or more of the requirements for patentability set forth in 35 U.S.C. §§ 101, 102, 102, and/or 112.

**COUNT THREE—DECLARATION OF UNENFORCEABILITY  
OF THE '978 PATENT**

22. CSAV, Inc. repeats and realleges the allegations of Paragraphs 1-21 as if fully set forth herein.

23. Claims 16 and 17 of the '978 Patent are unenforceable due to inequitable conduct and/or fraud on the USPTO. During the prosecution of the application that resulted in U.S. Patent No. 5,687,939 ("the '158 application"), the named inventor and his patent attorneys, individually or together, knew prior to the filing of the '158 application of material information which a reasonably competent patent examiner would have considered relevant to the question of patentability of one or more claims of the '978 reissue patent and intentionally and deceptively withheld such information from the patent examiner in violation of the acknowledged duty of candor and good faith to the USPTO.

24. Specifically, in a declaration filed in the application that resulted in the issuance of the '978 Patent, Moscovitch acknowledged that he and his attorney were

aware of certain material prior art prior to the filing of both the '158 application and the application that resulted in '978 Patent ("the '193 application"). Moscovitch did not provide this art to the patent examiner during the prosecution of the '158 application, nor did he do so in connection with the '193 application.

25. Moscovitch and his patent attorneys intentionally and deceptively withheld the prior art referred to by Moscovitch in his declaration from the patent examiner in each application in violation of the duty of candor and good faith, including but not limited to the following prior art.

26. On information and belief, Moscovitch and/or his attorneys failed to disclose or provide to the USPTO the EDI Industries, Ltd., Electrohome Electronics ("Electrohome"), and Bloomberg L.P. ("Bloomberg") prior art public uses, publications, offers for sale and sales of the LCD Dual Monitor Assembly, also known as the Bloomberg Terminal.

27. On information and belief, Moscovitch and Mass Engineered had manufactured, offered for sale and sold to Electrohome and/or Bloomberg between 1993 and April 25, 1995 dual display systems incorporating the invention claimed in claims 16 and 17 of the '978 Patent, knowing Bloomberg intended to publish, use and sell these systems to its customers in the United States and elsewhere.

28. In an effort to deceive the patent office, neither Moscovitch nor his attorneys disclosed to the patent office these prior art public uses, publications, offers for sale and sales of the LCD Dual Monitor Assembly.

29. On information and belief, Moscovitch did not himself solely invent the

subject matter claimed in claims 16 and 17 of the '978 Patent; rather others including but not limited to Bloomberg and Michael Bloomberg invented in part or in whole the subject matter claimed in claims 16 and 17 and disclosed such inventions to Moscovitch.

30. Notwithstanding Moscovitch's knowledge that he did not invent the subject matter of claims 16 and 17 of the '978 Patent, Moscovitch declared with deceptive intent to the USPTO on October 1, 1998 that he was the original and sole inventor of the invention claimed in the '939 patent and for which he sought issuance of claims 16 and 17.

31. An actual controversy has arisen and now exists between CSAV, Inc. and Defendants as to the enforceability of the claims of the '978 Patent.

32. Each and every claim of the '978 Patent is unenforceable due to inequitable conduct and/or fraud on the USPTO.

33. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., CSAV, Inc. requests a declaration from the Court that the claims of the '978 Patent are unenforceable due to inequitable conduct and/or fraud on the USPTO.

#### **JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38, CSAV, Inc. demands a trial by jury in this action.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff CSAV, Inc. respectfully requests that the Court enter judgment against Defendants Mass Engineered and Moscovitch, including:

A. An order declaring that CSAV, Inc. and its customers have not infringed and are not infringing the '978 Patent;

B. An order declaring that each claim of the '978 Patent is invalid;

C. An order declaring that the '978 Patent is unenforceable;

D. A judgment that all patent infringement claims asserted by Defendants against CSAV, Inc. and its customers are dismissed with prejudice;

E. An injunction prohibiting Mass Engineered and Moscovitch from alleging infringement of the '978 Patent by CSAV, Inc. or its customers;

F. An award of damages that CSAV, Inc. has sustained, along with pre-judgment and post-judgment interest;

G. A declaration that this case is "exceptional" within the meaning of 35 U.S.C. § 285 due to, *inter alia*, the above actions of Mass Engineered and/or Moscovitch;

H. An award of CSAV, Inc.'s attorneys fees and costs incurred in connection with this action; and

I. Such further relief that this Court deems proper and just.



Respectfully submitted,

Dated: March 4, 2008

By: 

Eric H. Chadwick

248,769

Casey Kniser

262,377

Aaron W. Davis

318,255

ATTORNEYS FOR PLAINTIFF CSAV, INC.

PATTERSON, THUENTE, SKAAR &

CHRISTENSEN, P.A.

4800 IDS Center

80 South Eighth Street

Minneapolis, Minnesota 55402-2100

Telephone: (612) 349-5740

Facsimile: (612) 349-9266